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CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.
11TH FLOOR, SEVEN PENN CENTER
1635 MARKET STREET
PHILADELPHIA, PA 19103-2212

EXAMINER

SHINGLES, KRISTIE D

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/539,662
Filing Date: March 30, 2000
Appellant(s): COMBEST, RICKY F

Nicholas M. Tinari, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/12/2008 appealing from the Office action mailed 6/13/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(8) Evidence Relied Upon

6,697,841	GODEFROID et al	2-2004
6,105,027	SCHNEIDER et al	8-2000
6,907,463	KLEINPETER III et al	6-2005

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7, 28-47 and 51 are pending.

Response to Arguments

Applicant's arguments filed 3/6/2008 have been considered but are not persuasive.

- A. Regarding Claim 1: Applicant argues that the cited prior art of record, *Godefroid et al*, fails to disclose "network access devices storing information that is searchable by other network access devices".

Examiner respectfully disagrees. *Godefroid et al* explicitly disclose a user of a first device allowing a user of a second device to access the first device (*col.3 lines 13-21 and 31-57*). The provision of accessibility to another user's device thus provides for the viewing and searching of the information being accessed. The rejection is therefore maintained.

- B. Regarding Claim 1: Applicant argues that the cited prior art of record, *Godefroid et al*, fails to disclose "an interface facilitating connection to a global network".

Examiner respectfully disagrees. *Godefroid et al* explicitly teach tracking a user's location for the presence awareness system using GPS (*col.5 lines 4-6*), and further implementing the collaborative system using such web browsers (*col.4 line 60*) and applications such as NetMeeting (*col.3 lines 11-13*) and AOL Instant Messenger (*col.2 lines 33-44*), which

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imply connections and communication over Internet global network. The rejection is therefore maintained.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by *Godefroid et al* (USPN 6,697,840).

a. Per claim 1, *Godefroid et al* teach a dynamic virtual network on which participating members can establish partnerships, communicate, and share information, the network comprising:

- a network authority including a computer programmed for network administration (*col.7 line 45-col.8 line 18—PA server functions as a network authority*);
- at least a first network member and a second network member, each member including a computer comprising means for communicating over a global network (*col.4 lines 48-63, col.5 lines 4-14 and 50-55—multiple user members in the network*);
- at least a first network access device and a second network access device, wherein the first access device is accessible by the first network member and the second access device is accessible by the second network member each of the first network access device and the second network access device storing information about the corresponding one of the first network member and the second network member such that the information is searchable by the other one of the first network member and the second network member (*col.2 lines 19-24, col.3 lines 35-62, col.6 lines 53-67, col.7 lines 1-44, col.8 lines 9-18—a respective PA*

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controller is associated with each user, accessible to the associated user and stores information about the associated user); and

- for each network access device and the network authority, an interface facilitating connection to a global network (*col.7 lines 1-20*).

b. Per claim 2, *Godefroid et al* teach the network claimed in claim 1, wherein the global network interface provides priority network transmission by connection to a commercial global network system, which provides business critical levels of service (*col.2 lines 19-22, col.3 lines 1-62, col.10 lines 1-35*).

c. Per claim 3, *Godefroid et al* teach the dynamic virtual network claimed in claim 1, including communication between the first and second network access devices, and the network authority, which utilizes digital certificates (*col.8 lines 9-65*).

d. Per claim 7, *Godefroid et al* teach the dynamic virtual network claimed in claim 1, including means for enabling limited access to the member's information to other network members, while excluding nonmembers from access (*col.3 lines 40-62*).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28-36, 38-44, 47 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Kleinpeter III et al* (USPN 6,907,463) in view of *Schneider et al* (USPN 6,105,027).

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a. Per claim 28, *Kleinpeter III et al* teach a method for forming a partnership between two dynamic virtual network members connected by a network, the method comprising:

- selecting a partnership criterion by the first network member (*col.1 lines 52-60, col.3 lines 60-67, col.4 lines 1-26 and col.7 lines 28-38—user's request message is partnership criterion that initiates the agent selection process*);
- broadcasting the partnership criterion by the first network member to other network members (*col.7 lines 39-44—broadcasting of the request message includes a query with partnership criterion*);
- receiving by a second network member the partnership criterion (*col.1 lines 60-66 and col.7 lines 28-57—all nodes of the network received the request message, including the node able to fulfill the request*);
- the second network member responding to the first network member (*col.1 line 65-col.2 line 46 and col.7 lines 57-61—the node able to fill the request responds*); and
- establishing a partnership relationship between the first network member and second network member (*col.1 line 62-col.3 line 43, col.4 lines 27-63, col.7 lines 57-61 and col.8 line 22-col.9 line 36—upon receiving response from the responding node, a partnership is established via a connection of the ports from the active agent to the passive agent for handshaking and transfer instructions*).

Yet, *Kleinpeter III et al* fail to distinctly teach virtual network members.

However, *Schneider et al* disclose a virtual private network with users forming a membership group (*Abstract, col.4 lines 43-50, col.7 lines 42-65, col.11 line 29-col.12 line 56*). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of *Kleinpeter III et al* and *Schneider et al* for the purpose of implementing a virtual network with logical connections and access to other users and resources on the network; because it permits secure transparent communication for the users thereby creating a wide area network capable of spanning large geographic regions with many users.

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b. Claim 36 is substantially similar to claim 28 and is therefore rejected under the same basis (*Kleinpeter III et al*: col.1 lines 43-45, col.3 lines 22-55, col.4 lines 18-26, col.7 lines 28-38, col.7 line 67-col.8 line 3 and col.11 lines 43-50).

c. Claims 38 and 39 are substantially similar to claim 36 and are therefore rejected under the same basis.

d. Per claim 29, *Schneider et al* and *Kleinpeter III et al* teach the method for forming a partnership over the dynamic virtual network as claimed in claim 28, *Schneider et al* further teach wherein the network members are connected to the network via a network access device, which denies network access to net non-members (col.3 lines 43-50, col.5 line 5-col.6 line 8 and col.7 lines 40-65).

e. Per claim 30, *Schneider et al* and *Kleinpeter III et al* teach the method for forming a partnership over the dynamic virtual network as claimed in claim 28, *Schneider et al* further teach wherein the establishment step grants the first network member access to private data via the second network member's access drive (col.2 lines 30-45, col.6 lines 23-36, col.14 line 24-col.15 line 49 and col.18 line 11-col.19 line 45).

f. Per claim 31, *Schneider et al* and *Kleinpeter III et al* teach the method for forming a partnership over the dynamic virtual network as claimed in claim 28, *Schneider et al* further teach wherein the establishment step grants the first network member access to private data via the second network member's shared storage area (col.2 lines 30-45, col.6 lines 23-36 and col.12 lines 3-47; *Kleinpeter III et al*: col.6 lines 48-56 and col.8 lines 14-20 and col.10 lines 13-32).

g. Per claim 32, *Schneider et al* and *Kleinpeter III et al* teach the method for forming a partnership over the dynamic virtual network as claimed in claim 28, *Schneider et al* further

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teach wherein the establishment step includes transmittal by the first network member to the second network member of authorization to access private data on the first network member's network access device (*col.9 line 56-col.13 line 8 and col.18 line 11-col.19 line 45*).

h. Claim 33 is substantially similar to claims 31 and 32 and is therefore rejected under the same basis.

i. Per claim 34, *Schneider et al* and *Kleinpeter III et al* teach the method for forming a partnership over the dynamic virtual network as claimed in claim 28, *Schneider et al* further teach wherein the establishment step includes permitting access by the first network member partner to role information of the second network member partner (*col.6 lines 23-36, col.9 line 44-col.10 line 39 and col.13 line 10-col.14 line 63*).

j. Claim 35 is substantially similar to claims 32 and 34 and is therefore rejected under the same basis.

k. Per claim 40, *Schneider et al* and *Kleinpeter III et al* teach the method for conducting a transaction between network members over the dynamic virtual network as claimed in claim 36, *Schneider et al* further teach wherein the archiving control element resides in the network access device (*col.42 lines 48-62*).

l. Claim 41 is substantially similar to claim 40 and is therefore rejected under the same basis.

m. Per claim 42, *Schneider et al* and *Kleinpeter III et al* teach the method for conducting a transaction between network members over the dynamic virtual network as claimed in claim 36, *Kleinpeter III et al* further teach wherein receiving and contemporaneously

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archiving the transmitted information includes sending a return receipt (*col.5 lines 26-56 and col.9 line 56-col.10 line 6*).

n. Per claim 43, *Schneider et al* and *Kleinpeter III et al* teach the method for conducting a transaction between network members over the dynamic virtual network as claimed in claim 36, *Schneider et al* further teach further comprising establishing a partnership between the first and second network members before the transmitting and contemporaneous archiving step (*col.7 lines 42-65 and col.10 lines 3-18*).

o. Per claim 44, *Schneider et al* and *Kleinpeter III et al* teach the method for conducting a transaction between network members over the dynamic virtual network as claimed in claim 36, *Schneider et al* further teach wherein transmitting and contemporaneously archiving includes encrypting the information (*col.4 lines 50-63, col.6 lines 9-22 and col.8 lines 19-27*).

p. Per claim 47, *Schneider et al* and *Kleinpeter III et al* teach the method for conducting a transaction between network members over the dynamic virtual network as claimed in claim 36, *Schneider et al* further teach wherein receiving and contemporaneously archiving transmitted information includes transmitting the signed document to the first network member (*col.10 lines 26-67; Kleinpeter III et al: col.2 lines 25-31, col.10 lines 13-25 and 64-67*).

q. Per claim 51, *Schneider et al* and *Kleinpeter III et al* teach a method of claim 28, *Kleinpeter III et al* wherein the partnership criterion is expressed as a search, and wherein the step of receiving comprises performing the search at the second network member (*col.1 lines 52-60, col.3 lines 60-67, col.4 lines 1-26 and col.7 lines 28-61*).

Claims 4 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Godefroid et al* (USPN 6,697,840) in view of *Schneider et al* (USPN 6,105,027).

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a. Per claim 4, *Godefroid et al* teach the dynamic virtual network claimed in claim 1, yet fails to further teach wherein at least the first and second network members include means for exchanging public keys. However *Schneider et al* teach network users exchanging public keys (*col.10 lines 19-37*). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of *Godefroid et al* with *Schneider et al* for the purpose of allowing users the ability to exchange public keys in order to permit other users to access encrypted/decrypted messages.

b. Claim 45 is substantially similar to claim 4 and is therefore rejected under the same basis.

Claims 5, 6, 37 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Godefroid et al* (USPN 6,697,840) in view of *Kleinpeter III et al* (USPN 6,907,463).

a. Per claim 5, *Godefroid et al* teach the method of claim 1 as applied above, yet fail to explicitly teach wherein the network authority further includes a means for contemporaneously archiving a communication transmitted over the network. However, *Kleinpeter III et al* teach archiving communications transmitted over the network to a server or gateway (*col.3 lines 22-55, col.7 line 67-col.8 line 3 and col.11 lines 34-50*). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of *Godefroid et al* with *Kleinpeter III et al* for the purpose of contemporaneously archiving communications transmitted over a network, because this provisions the maintenance of the transmitted communications and also allows for the quick retrieval of communications that have been archived and the ability to handle interrupts by not starting a transmission over, but only transmitting data that is missing.

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b. Claim 6 is substantially equivalent to claim 5 and is therefore rejected under the same basis.

c. Claim 37 is substantially equivalent to claim 2 and is therefore rejected under the same basis.

d. Claim 46 is substantially similar to claim 3 and is therefore rejected under the same basis.

(10) Response to Argument

A. Appellant argues—with respect to claims 1-3 and 7—that the *Godefroid et al* reference fails to disclose “network access devices that store information that is searchable by other network access devices”.

Examiner respectfully disagrees. *Godefroid et al* explicitly teach network devices with collaborative access to other network devices. *Godefroid et al* specifically teach a first user granting another user access privileges to information stored on the first user's device (*col.3 lines 31-62, col.8 lines 9-18 and 44-65*). *Godefroid et al* even gives an example of searchable calendar programs which can be shared between users (*col.2 lines 19-24*). Each user device has an associated PA Controller which stores the presence awareness policy specifications, collaboration data and captures state information regarding the associated user (*col.6 lines 53-67, col.7 lines 1-44*). Appellant's arguments are therefore unpersuasive.

B. Appellant argues—with respect to claims 27-35 and 51—that the rejection under *Kleinpeter III et al* in view of *Schneider et al* lacks motivation to combine the references because “the updating of local copies of the access

control database in Schneider makes the agent server in Kleinpeter III unnecessary”.

Examiner respectfully disagrees. The *Kleinpeter III et al* reference is directed towards providing a means for exchanging files between users in a network (*Abstract*); while the *Schneider et al* reference is directed towards providing an access filter usable in a virtual private network to control access by users of the network (*Abstract*). As seen in the rejection of independent claim 28 above, *Kleinpeter III et al* teach all of the limitations of claim 28, except for the virtual network members. Modifying the teachings of *Kleinpeter III et al* with *Schneider et al* for the purpose of adding the feature of a virtual network would've been an obvious modification to one of ordinary skill in the art at the time the invention was made, since *Schneider et al* extends the functionality of *Kleinpeter III et al*'s system to include users accessing information on a virtual network based on a user's/member's access privileges (*col.7 lines 42-65, col.11 line 29-col.12 line 56*). Appellant's argument of redundancy is therefore irrelevant to what the combination of *Kleinpeter III et al* with *Schneider et al* suggests. Appellant's arguments are therefore unpersuasive.

C. Appellant argues—with respect to claims 36 and 38-44—that the rejection under *Kleinpeter III et al* in view of *Schneider et al* fails to teach the limitations of claims 36 and 38-44.

Examiner respectfully disagrees. The method described in claim 36 involves conducting a transaction between network members of a dynamic virtual network, by transmitting/receiving and contemporaneously archiving information from a first network member to a second network member. The scope of this claim is taught by the prior art citations applied to the limitations of claim 28, which describes the formations of a partnership between

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two dynamic virtual network members by transmitting/receiving partnership criteria stored on member's device for establishing the network. Although the limitations of claim 36 are much broader than those of claim 28, the citations and rationale used to reject claim 28 can also be extended to the broad language of claim 36.

Kleinpeter III et al's teaching of file exchange between users includes the execution of a software agent which is copied in a timely manner onto a receiving user's device when a connection partnership is established between the two users (*Abstract, col.1 line 62-col.3 line 43, col.5 line 7-26, col.7 line 67-col.8 line 3, col.10 lines 20-31*). And as stated above, *Schneider et al* extends the functionality of *Kleinpeter III et al's* system to include users accessing information on a virtual network based on the user's/member's access privileges (*col.7 lines 42-65, col.11 line 29-col.12 line 56*). Appellant's arguments are therefore unpersuasive.

D. Appellant argues—with respect to claims 37 and 46—that the rejection under *Godefroid et al* in view of *Kleinpeter III et al* fails to teach the limitations of claims 37 and 46.

Examiner respectfully disagrees. Independent claim 36, as discussed above, is rejected under *Kleinpeter III et al* in view of *Schneider et al*. Claim 37, which depends on claim 36, recites the same claim language as claim 2 which is rejected under *Godefroid et al*. Thus the rejection of claim 37 is made under *Kleinpeter III et al* in view of *Schneider et al* in further view of *Godefroid et al*, wherein *Godefroid et al* further teaches a commercial global network service that provides business critical levels of service (*col.2 lines 19-22, col.3 lines 1-62, col.10 lines 1-35*). The rejection of claim 46 was established under the same rationale, wherein claim 46 includes claim language similar to claim 3, which is rejected under *Godefroid et al*. Thus the

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rejection of claim 46 is made under *Kleinpeter III et al* in view of *Schneider et al* in further view of *Godefroid et al*, wherein *Godefroid et al* further teaches digitally signing a document by the second network member (*col.8 lines 9-65*). *Kleinpeter III et al* also teaches the use of digital signatures for additional security between the users of the network (*col.10 lines 13-24*). Appellant's arguments are therefore unpersuasive.

E. Appellant argues—with respect to claim 45—that the rejection under *Godefroid et al* in view of *Schneider et al* fails to teach the claimed limitation of “transmitting and contemporaneously archiving information from a first network member to a second network member”.

Examiner respectfully disagrees. Claim 45 describes the limitation of encrypting the information and exchanging public keys between the network members, which is mirrored in claim 4 and is there rejected under the same rationale as claim 4, under *Schneider et al* (*col.10 lines 19-37*). The feature of “transmitting and contemporaneously archiving information from a first network member to a second network member” is recited in the claim 45's parent claim 36, which as stated above is rejected under *Kleinpeter III et al* in view of *Schneider et al*. Although *Kleinpeter III et al* and *Schneider et al* lack explicit recitation of the term “contemporaneously” to describe their archiving/storing process, the term itself is immeasurable in regards to how quickly data is archived on a device. Furthermore, Appellant's specification does not provide support to discern or determine the bounds of the archival speed. Therefore *Kleinpeter III et al*'s teaching of storing data in an automated, highest-possible, timely manner dependent upon the speed of the network connection (*col.2 line 32-col.3 line 55, col.5 line 7-26, col.7 line 67-col.8 line 3, col.10 lines 20-31*) sufficiently achieves the immeasurable scope of the claim language.

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Thus, the claims depending on independent claim 36 likewise inherit this same rejection.

Appellant's arguments are therefore unpersuasive.

For the above reasons, it is believed that the rejections should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Respectfully submitted,

/Kristie D. Shingles/
Examiner, Art Unit 2441

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444

Conferees:

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444

/John Follansbee/

Supervisory Patent Examiner, Art Unit 2451